

## CCRB INVESTIGATIVE RECOMMENDATION

|  |                                     |                                     |   |   |                                 |
|--|-------------------------------------|-------------------------------------|---|---|---------------------------------|
| Investigator:<br>Simon Wang                      | Team:<br>Team # 5                   | CCRB Case #:<br>201115960           | <input checked="" type="checkbox"/> Force             | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.   |
|  |                                     |                                     | <input checked="" type="checkbox"/> Abuse             | <input checked="" type="checkbox"/> O.L.      | <input type="checkbox"/> Injury |
| Incident Date(s)<br>Sunday, 12/11/2011 4:20 PM   | Location of Incident:<br>§ 87(2)(b) | Precinct:<br>40                     | 18 Mo. SOL<br>6/11/2013                               | EO SOL<br>6/11/2013                           |                                 |
| Date/Time CV Reported<br>Tue, 12/13/2011 1:33 PM | CV Reported At:<br>CCRB             | How CV Reported:<br>On-line website | Date/Time Received at CCRB<br>Tue, 12/13/2011 1:33 PM |   |                                 |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |
|                    |      |              |
|                    |      |              |

| Witness(es) | Home Address |
|-------------|--------------|
|             |              |
|             |              |
|             |              |
|             |              |

| Subject Officer(s)     | Shield | TaxID  | Command |
|------------------------|--------|--------|---------|
| 1. POM Michael Casey   | 05915  | 932431 | PSA 7   |
| 2. POM Isaac Soberal   | 18537  | 943830 | PSA 7   |
| 3. POM Daniel Castillo | 06284  | 946837 | PSA 7   |
| 4. POM Visar Marku     | 12789  | 942126 | PSA 7   |
| 5. An officer          |        |        |         |

| Witness Officer(s)      | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. SSA Fernando Valerio | 04812     | 914032 | PSA 7    |
| 2. POM Osbel Medina     | 07778     | 946694 | PSA 7    |

| Officer(s)            | Allegation  | Investigator Recommendation |
|-----------------------|---|-----------------------------|
| A.POM Michael Casey   | Force: PO Michael Casey used physical force against § 87(2)(b)  |                             |
| B.POM Daniel Castillo | Abuse: PO Daniel Castillo threatened to arrest § 87(2)(b)   |                             |
| C.POM Daniel Castillo | Discourtesy: PO Daniel Castillo spoke rudely to § 87(2)(b)  |                             |
| D.POM Visar Marku     | Abuse: PO Visar Marku entered and searched § 87(2)(b)   |                             |
| E.POM Isaac Soberal   | Abuse: PO Isaac Soberal entered and searched § 87(2)(b)   |                             |
| F.POM Visar Marku     | Discourtesy: PO Visar Marku spoke rudely to § 87(2)(b)  |                             |
| G.POM Visar Marku     | Off. Language: PO Visar Marku made remarks to § 87(2)(b) based upon his perceived sexual orientation. |                             |
| H.POM Visar Marku     | Force: PO Visar Marku used physical force against § 87(2)(b)  |                             |

| Officer(s)          | Allegation   | Investigator Recommendation |
|---------------------|--|-----------------------------|
| I.POM Michael Casey | Discourtesy: PO Michael Casey spoke rudely to § 87(2)(b) |                             |
| J. An officer       | Discourtesy: An officer spoke rudely to § 87(2)(b)       |                             |

### Case Summary

On December 13, 2011, § 87(2)(b) filed the following complaint online with the CCRB. On December 11, 2011 at approximately 4:20 p.m., § 87(2)(b)'s husband § 87(2)(b) was arrested for § 87(2)(b) by PO Isaac Soberal and PO Daniel Castillo of PSA7. The following allegations resulted:

- **Allegation A – Force: PO Michael Casey used physical force against** § 87(2)(b)  
§ 87(2)(g)  
§ 87(2)(g)
- **Allegation B – Abuse of Authority: PO Daniel Castillo threatened to arrest** § 87(2)(b)
- **Allegation C – Discourtesy: PO Daniel Castillo spoke rudely to** § 87(2)(b)  
§ 87(2)(g)
- **Allegation D – Abuse of Authority: PO Visar Marku entered and searched** § 87(2)(b)  
§ 87(2)(b)
- **Allegation E – Abuse of Authority: PO Isaac Soberal entered and searched** § 87(2)(b)  
§ 87(2)(b) § 87(2)(g)
- **Allegation F – Discourtesy: PO Visar Marku spoke rudely to** § 87(2)(b)  
§ 87(2)(g)
- **Allegation G – Offensive Language: PO Visar Marku made remarks to** § 87(2)(b)  
**based upon his perceived sexual orientation.** § 87(2)(g)
- **Allegation H – Force: PO Visar Marku used physical force against** § 87(2)(b)  
§ 87(2)(g)
- **Allegation I – Discourtesy: PO Michael Casey spoke rudely to** § 87(2)(b)  
§ 87(2)(g)
- **Allegation J – Discourtesy: An officer spoke rudely to** § 87(2)(b) § 87(2)(g)

On February 2, 2012, this case was reassigned to the undersigned investigator from Investigator Ian Allen upon Investigator Allen's departure from the agency.

### Results of Investigation

#### Civilian Statements

**Complainant/Victim:** § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old Hispanic female, who is 5'0" tall and weighs 141 pounds. She has black hair and brown eyes. § 87(2)(b)

### **CCRB Testimony**

On December 13, 2011, § 87(2)(b) filed this complaint online with the CCRB and prepared a written statement (encl. 4a-e). On December 27, 2011, § 87(2)(b) was interviewed at the CCRB. Her statements are summarized below with inconsistencies noted (encl. 5a-d).

At approximately 4:20 p.m. on December 11, 2011, § 87(2)(b) was in her residence located at § 87(2)(b) in the Bronx. As she was preparing dinner, her husband Freddy § 87(2)(b) returned from playing football with § 87(2)(b) old sons, § 87(2)(b) and § 87(2)(b). § 87(2)(b) was wearing sports attire. § 87(2)(b) and § 87(2)(b) were playing outside. § 87(2)(b) changed his clothes and left the apartment. Three to four minutes later, § 87(2)(b) overheard § 87(2)(b) arguing and cursing with a male outside of the apartment, but she did not pay any attention to it.

Approximately five minutes later, § 87(2)(b) a neighbor from § 87(2)(b) entered the apartment. § 87(2)(b) told § 87(2)(b) that she needed to go downstairs. § 87(2)(b) exited her apartment and went to the ground floor. On the ground floor of the building, there is a front entrance, followed by three steps and then an inner door, leading to the stairwell. Inside the stairwell there are three steps that lead to the exit to the rear of the building. § 87(2)(b) was laying face-down on the ground in the doorway of the back door, with his upper body outside of the doorway. § 87(2)(b) was surrounded by six to eight officers in uniform. PO Michael Casey of PSA7, was leaning over § 87(2)(b)'s upper body, holding § 87(2)(b)'s hood over his head with his right hand and punching him in the back of the head with his left hand. § 87(2)(b) did not recall how many times he punched § 87(2)(b). § 87(2)(b) failed to mention this allegation in her online complaint. § 87(2)(b) identified PO Casey by reading his nameplate and described PO Casey as a white male in his late thirties or early forties, 6'0" to 6'2" tall, with blue eyes, and a short haircut. § 87(2)(b) also identified PO Daniel Castillo of PSA7 by reading his nameplate. PO Castillo was in his mid to late thirties, 5'8" to 5'10" tall, weighing approximately 200 to 220 pounds, with a caramel complexion. PO Castillo was holding § 87(2)(b)'s hands behind his back and had his knee on § 87(2)(b)'s lower back. In her online complaint, § 87(2)(b) stated that PO Castillo held down § 87(2)(b)'s head with his knee. § 87(2)(b) did not know whether § 87(2)(b) was handcuffed at the time. When he saw § 87(2)(b) PO Castillo told her, "Move the fuck back or I'll fucking arrest you." Additionally, there was an unidentified officer, described by § 87(2)(b) as a dark skinned, male, 5'7" tall, with a thin build and dressed in a NYPD turtleneck sweater without a shield or nameplate displayed. This officer was lying on top of § 87(2)(b) pinning him down to the ground.

§ 87(2)(b) and § 87(2)(b) were crying and looking at what was occurring. The officers allowed § 87(2)(b) children to pass by § 87(2)(b) and gather their belongings. § 87(2)(b) and § 87(2)(b) grabbed a sweater, a football, and two book bags that were on the ground. One of the book bags was a black nylon drawstring bag, with "Nike" written on it. The other book bag was black, grey, and red Northface bag with strings crossing in the front. § 87(2)(b) handed the sweater and one of the book bags to § 87(2)(b). He handed the other book bag to § 87(2)(b). § 87(2)(b) told § 87(2)(b) to take her children upstairs. PO Castillo told § 87(2)(b) to go upstairs. § 87(2)(b) and § 87(2)(b)'s children all returned to § 87(2)(b) apartment.

§ 87(2)(b)'s § 87(2)(b)-year-old son § 87(2)(b) in the living room. § 87(2)(b) decided to go back downstairs to check on § 87(2)(b). As soon as she opened her apartment door, six to seven officers rushed into the apartment, including PO Castillo, who grabbed § 87(2)(b)'s

arms and placed them behind her back without handcuffing her. The other officers who entered the apartment included, PO Casey, an officer identified by the investigation as PO Isaac Soberal, and the unidentified dark skinned male officer whom she had seen downstairs. § 87(2)(b) described PO Soberal as a white male in his twenties, 5'10" to 6'0" tall, with blue eyes, and short hair combed back. § 87(2)(b) could not describe the other officers.

One of the officers took § 87(2)(b) back to her apartment. The unidentified officers searched the kitchen, including the stove, freezer, and refrigerator. PO Soberal searched the bathroom, PO Casey searched the children's bedroom, including the closet, under the bed, and in the drawer. PO Castillo asked § 87(2)(b) "Where's the book bag?" § 87(2)(b) asked PO Castillo to which bag he was referring. PO Castillo responded, "You know what fucking book bag. Where's the book bag?" One of § 87(2)(b)'s sons informed her that the bags were in their room. § 87(2)(b) asked PO Castillo to go with her to the room. PO Castillo escorted § 87(2)(b) to § 87(2)(b) and § 87(2)(b)'s room. PO Castillo looked through the book bags and took the Northface bag out into the hallway of the building.

PO Castillo returned and stated that he found a gun in the bag. PO Castillo handcuffed § 87(2)(b) and escorted her out into the hallway. § 87(2)(b) was allowed to brought her socks and boots. PO Casey told him to "shut the fuck up and hurry up." § 87(2)(b) asked the officers why they were arresting his mother. PO Soberal responded, "Shut the fuck up, little faggot," and told him, "Sit your gay ass down." PO Soberal then pushed § 87(2)(b) by the shoulders into the couch and then picked him up by the shoulder of his shirt, ripping his shirt. § 87(2)(b) said, "You ripped my shirt. You ripped my shirt." In her online complaint § 87(2)(b) alleged that PO Casey rather than PO Soberal took those actions.

§ 87(2)(b) was escorted downstairs and transported to the PSA 7 stationhouse along with § 87(2)(b) and § 87(2)(b) in a marked van. Inside the van, § 87(2)(b) sat next to § 87(2)(b) and rubbed his sleeve against her arm to roll up his sleeve to reveal a large red welt on his right arm. § 87(2)(b) also noted that § 87(2)(b) had blood on his wrists, cuts on his face and was bleeding from the lip area. § 87(2)(b) did not go to the hospital. § 87(2)(b) was charged with § 87(2)(b).

**Victim:** § 87(2)(b)

- § 87(2)(b) is a Hispanic male, who was § 87(2)(b)-old at the time of the incident. He is 5'8" tall and weighs 140 pounds. He has black hair and brown eyes. § 87(2)(b)

**CCRB Testimony**

§ 87(2)(b) was interviewed at the CCRB on December 27, 2011 (encl. 7a-f).

§ 87(2)(b) was in his room when § 87(2)(b) came into his room, asking where their mother's phone was. He then ran out of the room, shutting the door behind him. § 87(2)(b) heard a commotion in the apartment, so he left the room to see his mother, § 87(2)(b) walk into the apartment with their neighbor, § 87(2)(b) and his two little brothers. § 87(2)(b) attempted to lock the door, but before she could do so, five to six officers rushed into the apartment.

§ 87(2)(b) stood in front of the door in an attempt to stop the officers from entering the apartment any further, by standing in front of them with his hands extended towards them and

asking them, “Where’s your search warrant? Where’s your search warrant?” One of the officers then handcuffed § 87(2)(b) and pressed her face-first against a wall. An officer identified by the investigation as PO Visar Marku stated, “We’ll show you a search warrant.” § 87(2)(b) described PO Marku as a white male, who was 5’11” tall. § 87(2)(b) asked to see the warrant and PO Marku started screaming, “Where’s the bag? Where’s the bag?” § 87(2)(b) asked him what bag was he talking about. PO Marku responded, “Where’s the fucking bag?” While § 87(2)(b) was still blocking the officer, PO Marku grabbed § 87(2)(b) by the chest of his shirt and pushed him backwards, walking with him, approximately seven feet onto the living room sofa. § 87(2)(b) attempted to get up and as he was doing so, he again asked for a search warrant. PO Marku then pushed § 87(2)(b) back down onto the sofa and said, “Sit the fuck down, faggot.” § 87(2)(b) stood up and asked PO Marku to be respectful. PO Marku grabbed § 87(2)(b) by the chest of his shirt again and pushed § 87(2)(b) back onto the sofa and as he did so, he ripped § 87(2)(b)’s red Hollister polo shirt from the collar to mid breast on the left side of the shirt. When PO Marku grabbed him, he left a scratch on the left side of § 87(2)(b)’s chest. PO Marku also told § 87(2)(b) “Shut your little gay ass up.”

The officers went to one of the back rooms of the house, but § 87(2)(b) did not see what they did there because he remained in the living room. An officer identified by § 87(2)(b) as PO Casey also entered the apartment and searched the living room closet. § 87(2)(b) described PO Casey as a white male, 6’2” tall, in his early thirties, with a slim build, blue eyes, and dirty blond hair. An officer repeatedly asked § 87(2)(b) for the bag. The officers sat § 87(2)(b) down on the sofa and allowed § 87(2)(b) to get a coat, socks and a sweater for her. As § 87(2)(b) was putting socks on § 87(2)(b) PO Casey told him to hurry up. § 87(2)(b) asked the officer to give him more time. PO Casey responded, “Listen. Shut the fuck up.” § 87(2)(b) then got up and sat on the computer chair next to his mother. An unidentified officer § 87(2)(b) described as a white or Hispanic male, standing 5’8” tall, told § 87(2)(b) to stay in his previous location. § 87(2)(b) told the officer that he wanted to sit next to his mother. The officer then said, “Get the fuck up and stay right there.” § 87(2)(b) asked § 87(2)(b) not to argue and § 87(2)(b) complied with the officer’s request. PO Marku took § 87(2)(b) out of the apartment and searched all of the rooms of the apartment, including his little brother’s room and his mother’s room, eventually finding one of his little brother’s bags, which was a grey Jansport book bag. § 87(2)(b) could only describe the other officers as white males.

§ 87(2)(b) went downstairs and saw that the officers had arrested § 87(2)(b) § 87(2)(b) and § 87(2)(b) were then placed in a red van.

**Witness:** § 87(2)(b)

- § 87(2)(b) is a § 87(2)(b)-old Hispanic female, who is 5’2” tall and weighs 160 pounds. She has brown hair and brown eyes. § 87(2)(b)

**CCRB Testimony**

On January 13, 2012, § 87(2)(b) was interviewed at her home at § 87(2)(b) § 87(2)(b) (encl. 8a-c).

§ 87(2)(b) was inside her apartment at § 87(2)(b) at § 87(2)(b) § 87(2)(b) in the Bronx when she heard screaming coming from outside her door. To the right of § 87(2)(b)’s apartment door was the stairwell of the building. § 87(2)(b) exited her apartment and saw an individual identified by the investigation as § 87(2)(b) on the ground just outside of the door of the stairwell leading to the exterior. § 87(2)(b) was face-down, with his head facing towards § 87(2)(b) Four

white male police officers in uniform were present. § 87(2)(b) could not describe the officers any further. One officer had a knee against § 87(2)(b)'s back. The other officers were standing around § 87(2)(b). § 87(2)(b)'s hands were together behind his lower back. § 87(2)(b) did not know if he was in handcuffs. All of the contact made by the officers were against § 87(2)(b)'s back. § 87(2)(b) continued screaming despite appearing to be physically subdued.

§ 87(2)(b)'s younger son was standing outside of the building, underneath § 87(2)(b)'s window, which was located adjacent to the door of the stairwell leading out of the building. He was crying and being consoled by an unidentified bystander. § 87(2)(b) was standing on the steps of the stairwell, looking down at the officers.

§ 87(2)(b)'s daughter § 87(2)(b) stated that she would escort § 87(2)(b)'s son upstairs to § 87(2)(b)'s apartment, and § 87(2)(b) returned inside her apartment. § 87(2)(b) did not return after five to ten minutes, so § 87(2)(b) walked upstairs to § 87(2)(b)'s apartment and saw an unidentified white male officer speaking to § 87(2)(b) in the hallway of her apartment. § 87(2)(b) could not describe this officer in any more detail. § 87(2)(b) asked to enter the apartment to speak to § 87(2)(b) but was denied permission, so she could not see inside the apartment.

§ 87(2)(b) returned to her apartment, and a few minutes later, § 87(2)(b) came downstairs with an unidentified officer described as a white male in a dark blue uniform, approximately 6'0" tall, with a muscular build, appearing to be 50-60 years old, with brown hair. The officer told § 87(2)(b) that he was taking § 87(2)(b) for questioning but § 87(2)(b) was not wearing any shoes, so they were there to retrieve her shoes. § 87(2)(b) told § 87(2)(b) that she had asked the officer if she could get her shoes. § 87(2)(b) entered the apartment and walked into a bedroom. The officer entered behind § 87(2)(b) and stood at the door of the bedroom, approximately fifteen feet directly in front of the door of the apartment. The officer watched § 87(2)(b) but did not enter any other room or search anything. After § 87(2)(b) put on her shoes. The officer handcuffed her and took her away.

### **Attempts to Contact Civilians**

Investigator Allen made four contact attempts to § 87(2)(b) to interview him between January 6, 2012 and January 18, 2012. The undersigned called § 87(2)(b) on April 6, and May 2, 2012, but his phone was disconnected. A call request letter was sent to § 87(2)(b)'s home on December 14, 2011 and June 1, 2012. None of the letters have been returned undelivered by the US Postal Service. A search of the Department of Corrections' inmate-locator indicated that § 87(2)(b) was not incarcerated during attempts to contact him. To date, § 87(2)(b) has not responded to these contact attempts.

On January 13, 2012, the undersigned investigator visited § 87(2)(b)'s home to interview her, but she was not present. On April 6 and May 4, 2012, the undersigned called § 87(2)(b) but she did not respond to the calls. A call request letter was sent to § 87(2)(b) which was not returned undelivered by the US Postal service. A Department of Corrections inmate-locator indicated that § 87(2)(b) was not incarcerated during contact attempts. To date, § 87(2)(b) has not responded to these attempts to contact her.

§ 87(2)(b) and § 87(2)(b) were § 87(2)(b) old at the time of the incident, so they were not interviewed for this investigation.

## **NYPD Statements:**

### **Subject Officer: PO ISAAC SOBERAL**

- *PO Soberal is a § 87(2)(b)-old Hispanic male, who is 6'0" tall and weighs 200 pounds. He has brown hair and brown eyes.*
- *On December 11, 2011, PO Soberal was assigned to conditions with PO Castillo. They were dressed in uniform and drove a marked patrol car. Since the date of the incident, PO Soberal was promoted to sergeant and has been assigned to the 7<sup>th</sup> Precinct.*

### **Arrest Reports**

The arrest reports for § 87(2)(b) and § 87(2)(b) all stated that they were in possession of a loaded Smith and Wesson .357 magnum, and that a search incident to lawful arrest revealed two bags of marijuana. § 87(2)(b) was charged with § 87(2)(b)

§ 87(2)(b) and § 87(2)(b) were charged with § 87(2)(b)

(encl. 9a-11b).

### **Complaint Report**

The complaint report was consistent with the arrest reports and did not include any further information (encl. 12a-b).

### **Memo Book**

On December 11, 2011, at 4:10 p.m., PO Soberal conducted a vertical patrol at § 87(2)(b). At 4:20 p.m., three arrests were made. § 87(2)(b) was observed placing a firearm in a book bag on the steps between the first floor and the second floor. PO Soberal was informed by PO Marku that § 87(2)(b) gave the book bag to § 87(2)(b) who carried it into § 87(2)(b). The book bag was recovered with firearm in back right room in a closet (encl. 13a-c).

### **CCRB Statement**

On October 12, 2012, PO Soberal was interviewed at the CCRB (encl. 14a-c).

On December 11, 2011, at approximately 4:20 p.m. PO Soberal was driving with his partner PO Castillo, when they passed by § 87(2)(b). PO Soberal saw § 87(2)(b) enter § 87(2)(b). PO Soberal became suspicious of § 87(2)(b) because § 87(2)(b) appeared frightened upon seeing the patrol car. § 87(2)(b) repeatedly turned his head back and forth looking at the officers. PO Soberal has frequently encountered people injecting heroine in the hallways and stairwells of the building. PO Soberal conveyed what he had seen to PO Castillo and stated that they would conduct a vertical patrol of the building.

PO Soberal and PO Castillo entered the building and saw § 87(2)(b) in the stairwell on the first floor. § 87(2)(b) was reaching into his book bag, with a solid dark handle of a firearm in his hand. Upon seeing the officers, § 87(2)(b) placed the firearm inside the book bag. § 87(2)(b) placed the book bag on his back, and began to walk towards the exit of the building. PO Soberal and PO Castillo approached § 87(2)(b) intending to stop him and investigate further. PO Soberal asked § 87(2)(b) for identification and told § 87(2)(b) to place his hands on the wall. § 87(2)(b) ignored PO Soberal's command and yelled, "Why are you stopping me?" PO Soberal moved



between § 87(2)(b) and the stairs to block that route of escape. § 87(2)(b) then moved towards the door of the stairwell leading outside the building. PO Soberal issued further commands to § 87(2)(b) directed at getting him to stop and place his hands on the wall. § 87(2)(b) moved more towards the exit, so PO Soberal grabbed him. § 87(2)(b) responded by shoving PO Soberal and swinging his arms. § 87(2)(b) was also kicking his legs. PO Soberal used his radio and called for additional units (10-85), but provided the address of the adjacent building by accident.

PO Soberal and § 87(2)(b) fell to the ground together through the exit, into the courtyard outside. PO Castillo was also on the ground. PO Soberal threw two punches aimed at § 87(2)(b)'s stomach, but did not successfully punch him. PO Soberal and PO Castillo wrestled with § 87(2)(b) for approximately three to four minutes after falling to the ground before any other officer arrived. PO Soberal and PO Castillo could not subdue § 87(2)(b) before the arrival of other officers. Other officers from both PSA 7 and the 40<sup>th</sup> Precinct arrived. PO Soberal moved onto his knees, while § 87(2)(b) was still on the ground. PO Soberal felt a tug on his gun belt, and looked down to see § 87(2)(b)'s hand on the handle of his gun. PO Soberal yelled out for officers to watch their guns, and an officer whom PO Soberal did not see, struck the hand with which § 87(2)(b) had reached for PO Soberal's gun. PO Soberal later observed an abrasion on § 87(2)(b)'s hand.

Once officers were able to control § 87(2)(b)'s arms, they determined that they could not place his hands behind his back without removing the book bag. PO Soberal did not recall who removed the book bag, but it was taken off § 87(2)(b) and placed on the ground next to him. Throughout the time in which the officers were attempting to handcuff § 87(2)(b) on the ground, he was calling out for help, so a group of people gathered in the courtyard. PO Soberal did not know whether § 87(2)(b) or § 87(2)(b) were present at that point. Amongst those gathered was a juvenile male who was crying. PO Soberal did not see § 87(2)(b) or § 87(2)(b) with that juvenile. The photograph taken of § 87(2)(b) at the CCRB was shown to PO Soberal. PO Soberal did not recognize him and stated that § 87(2)(b) was not the child he saw at the location. PO Soberal did not know whether the child at the scene had a book bag. PO Soberal denied that there was more than one book bag with § 87(2)(b).

Immediately after handcuffing § 87(2)(b) PO Soberal wanted to search the bag, but found that it was no longer on the ground next to them. PO Soberal asked out-loud where the bag was. PO Marku stated, "The girls have it." PO Soberal did not see to whom PO Marku was referring. PO Marku entered the building in front of PO Soberal and entered the stairwell. § 87(2)(b) and § 87(2)(b) were one floor above the officers in the stairwell, though PO Marku could see them while PO Soberal could not.

PO Marku stated that he saw § 87(2)(b) and § 87(2)(b) enter § 87(2)(b). PO Marku entered the apartment immediately behind § 87(2)(b) and § 87(2)(b) before the door could be closed, and PO Soberal followed immediately behind PO Marku. PO Soberal believed that they were in hot-pursuit of § 87(2)(b) and § 87(2)(b) who had committed the crimes of illegal possession of a firearm as well as removing evidence from a crime scene. PO Soberal's intention in entering the apartment was to recover evidence as well as to arrest § 87(2)(b) and § 87(2)(b). Upon entering the apartment, the officers were in the living room. There were at least two young adult male individuals who were upset upon seeing the officers, though PO Soberal did not recall how many there were exactly. For his safety, PO Soberal instructed everyone to sit down on the couch. PO Soberal did not recall whether he physically pushed anyone into a chair or couch. Up to seven officers entered the apartment after

PO Soberal, though he did not recall who they were. PO Soberal looked into every room to ensure that there were no individuals unaccounted for in the apartment, but did not open any closets, cabinets, drawers or containers.

PO Soberal denied hearing an officer say, “Shut your little gay ass up” “Shut the fuck up,” or “Sit the fuck down, faggot.” PO Soberal stated that he asked for the bag, but denied saying, “Where’s the fucking bag?”

PO Soberal handcuffed § 87(2)(b) and placed her under arrest. PO Soberal then spoke to Sgt. Valerio by radio or by phone, he did not recall which, and informed him of the situation. Sgt. Valerio did not give PO Soberal any instructions. PO Soberal led § 87(2)(b) into the hallway. PO Soberal stated that his intention at that point was to secure the apartment and obtain a search warrant to search the apartment. Before PO Soberal took any action towards obtaining a search warrant, he informed § 87(2)(b) why she was under arrest and stated that he believed there was a gun in the bag. § 87(2)(b) stated that she did not know what was in the bag, but stated that the bag was in her closet. § 87(2)(b) led PO Soberal to the second bedroom and gestured towards an open closet, where PO Soberal saw the same book bag which was previously in § 87(2)(b) s possession. PO Soberal removed the bag from the closet and opened it. He saw a .357 magnum caliber handgun and two bags of marijuana. He removed the gun from the bag and saw that it was loaded. PO Soberal took the gun and bag downstairs.

**Subject Officer: PO DANIEL CASTILLO**

- PO Castillo is a § 87(2)(b) -old Hispanic male, who is 6’0” tall and weighs 230 pounds. He has brown hair and brown eyes.
- On December 11, 2011, PO Castillo was assigned to a conditions team with PO Soberal. They were dressed in uniform and drove a marked patrol car.

**Memo Book**

On December 11, 2011, at 4:10 p.m., PO Castillo conducted a vertical patrol of § 87(2)(b). At 4:20 p.m., three arrests made after he had, “observed § 87(2)(b) place a firearm in book bag.” PO Castillo was informed by PO Marku that § 87(2)(b) gave book bag to § 87(2)(b) who carried it into § 87(2)(b). The officers “recovered book bag with firearm in back right bedroom in closet.” At 4:30 p.m. PO Castillo arrived at PSA 7 stationhouse for arrest assist once (encl. 16a-d).

**CCRB Statement**

On August 30, 2012, PO Castillo was interviewed at the CCRB (encl. 17a-b).

PO Castillo and PO Soberal were conducting a vertical patrol at § 87(2)(b). As they were inside the stairwell on the main floor, they encountered § 87(2)(b) carrying a book bag. PO Soberal was in front of PO Castillo. PO Castillo did not see what § 87(2)(b) was doing and PO Soberal did not inform PO Castillo at that moment what he had observed § 87(2)(b) doing. PO Soberal approached § 87(2)(b) and PO Castillo followed.

PO Soberal and PO Castillo asked § 87(2)(b) to produce identification. § 87(2)(b) complied, but became loud and angry, yelling at the officers. § 87(2)(b) attempted to punch PO Castillo and PO Soberal. PO Castillo raised his hands in front of him in order to block any blows and reached for § 87(2)(b) in an attempt to grab him. PO Soberal took similar actions to PO Castillo, but § 87(2)(b) was muscular, and the officers were not able to place § 87(2)(b) s hands behind

his back. PO Castillo and PO Soberal were eventually able to bring § 87(2)(b) to the ground. As § 87(2)(b) was on the ground, § 87(2)(b) flailed his arms and attempted to punch the officers. Neither officer punched or struck § 87(2)(b) as he was on the ground. PO Soberal and PO Castillo were attempting to bend § 87(2)(b)'s arms behind his back in order to handcuff him.

Officers who arrived in response to a radio call helped PO Castillo and PO Soberal grab § 87(2)(b)'s arms and place him in handcuffs. None of the officers struck or punched § 87(2)(b). During the course of handcuffing, § 87(2)(b)'s book bag was separated from § 87(2)(b). PO Castillo did not see where the book bag was placed. PO Castillo did not see any civilian approach the vicinity of the officers and § 87(2)(b) and he did not see who took the book bag. PO Castillo did not yell to anyone, "move the fuck back or I'll fucking arrest you."

After § 87(2)(b) was handcuffed, he was taken to a patrol car. PO Soberal was not with PO Castillo as he did this. PO Castillo did not participate in retrieving the book bag. PO Castillo stated that although his memo book stated, "Recovered book bag..." this did not mean that he personally recovered the book bag. PO Castillo did not see where PO Soberal went after § 87(2)(b) was handcuffed. PO Castillo denied that he entered § 87(2)(b). PO Castillo denied that he had any interaction with § 87(2)(b) or § 87(2)(b).

**Subject Officer: PO VISAR MARKU**

- *PO Marku is a § 87(2)(b)-old white male, who is 6'1" tall and weighs 220 pounds. He has brown hair and brown eyes.*
- *On December 11, 2011, PO Marku was assigned to conditions with PO Osbel Medina as his partner. They were dressed in uniform and assigned to a marked patrol car. Since the incident date, PO Marku was promoted to sergeant and has been reassigned to the 34<sup>th</sup> Precinct.*

**CCRB Statement**

On January 24, 2013, PO Marku was interviewed at the CCRB (encl. 15a-b).

PO Marku and PO Medina responded to a call over the radio by PO Castillo and PO Soberal asking for additional units. PO Marku believed that PO Castillo and PO Soberal were in trouble because the request was repeated with different addresses. PO Marku knew that the incident location was somewhere in the housing development of which § 87(2)(b) was a part. PO Marku searched the rear alley of the buildings while PO Medina went to the front of the buildings. PO Marku entered § 87(2)(b) through the entrance from the back alley. Inside the stairwell, PO Soberal and PO Castillo were on the ground with a male individual identified by the investigation as § 87(2)(b). PO Soberal and PO Castillo were wrestling with § 87(2)(b) and attempting to handcuff him. As PO Marku approached to assist PO Soberal and PO Castillo, PO Soberal yelled out, "Gun! Gun! She has the gun!" PO Marku saw a heavyset female with dark hair wearing pink sweatpants later identified as § 87(2)(b) running up the stairs carrying a book bag.

Based on PO Soberal's information that § 87(2)(b) had a gun, PO Marku chased after her and saw that there was a skinny female in baggy sweatpants and a tank top later identified as § 87(2)(b) with § 87(2)(b). PO Marku yelled out "Stop" repeatedly. PO Marku incorrectly recalled that § 87(2)(b) and § 87(2)(b) ran to the fourth floor of the building, but the investigation determined that it was the third floor. According to PO Marku's recollection, as they were between the third and fourth floors, § 87(2)(b) handed the book bag

to § 87(2)(b) and they continued onto the fourth floor into an apartment PO Marku incorrectly recalled was § 87(2)(b) but the investigation determined was § 87(2)(b) PO Marku entered the apartment immediately behind them before they could close the door. PO Soberal followed behind PO Marku into the apartment. PO Marku's intention in entering the apartment was to recover the gun and to arrest § 87(2)(b) and § 87(2)(b) for § 87(2)(b) § 87(2)(b).

PO Marku grabbed § 87(2)(b) approximately six feet from the apartment door. As PO Marku was holding § 87(2)(b) two teenaged males grabbed PO Marku by the legs while cursing at him. PO Marku pushed the two males away from him. As he pushed one male identified by the investigation as § 87(2)(b) PO Marku accidentally ripped § 87(2)(b)'s shirt. PO Marku did not intend to rip the shirt. PO Marku denied that he said, "Sit the fuck down faggot." He did not recall whether any other officers cursed at any of the civilians. PO Marku told § 87(2)(b) to sit down.

PO Marku handcuffed § 87(2)(b) who was compliant. PO Soberal asked her where the book bag was located, and § 87(2)(b) told him, "It's somewhere down there. The book bag is there." PO Soberal walked down the hallway and into either a room or a closet in the hallway. PO Soberal found the book bag and took it. PO Marku did not recall which officer handcuffed § 87(2)(b) but she was arrested inside the apartment with § 87(2)(b) PO Marku did not recall whether there were other officers inside the apartment apart from him and PO Soberal but there were officers in the hallway outside of the apartment.

PO Marku and PO Soberal exited the apartment with § 87(2)(b) and the book bag respectively and walked downstairs. § 87(2)(b) was brought downstairs separately. All three defendants were placed in a prisoner van and were transported to the PSA 7 stationhouse, where PO Marku took the arrest photographs of § 87(2)(b) and § 87(2)(b) § 87(2)(b) PO Marku observed an unspecified injury on § 87(2)(b)'s hand and asked him if he wanted to go to the hospital. § 87(2)(b) refused.

**Subject Officer: PO MICHAEL CASEY**

- PO Casey is a § 87(2)(b)-old white male, who is 6'1" tall and weighs 210 pounds. He has brown hair and blue eyes.
- On December 11, 2011, PO Casey was working as Sgt. Valerio's operator on the conditions team of PSA 7. He was dressed in uniform and assigned to a marked RMP.

**Memo Book**

On December 11, 2011, at 4:05 p.m. PO Casey received a call for additional units (10-85) for § 87(2)(b) § 87(2)(b) PO Casey arrived at the scene at 4:07 p.m. At 4:20 p.m., three arrests were made by PO Soberal (encl. 20a-c).

**CCRB Statement**

On August 30, 2012, PO Michael Casey was interviewed at the CCRB (encl. 21a-b).

PO Casey and Sgt. Valerio responded to call for additional units at § 87(2)(b) in the Bronx. Upon arrival, PO Casey saw PO Castillo and PO Soberal with § 87(2)(b) under arrest outside in the rear of the building. PO Soberal and PO Castillo transported § 87(2)(b) in their patrol car. PO Casey did not see any visible injuries on § 87(2)(b) PO Casey did not see § 87(2)(b).

§ 87(2)(b) or § 87(2)(b) at the location. Neither PO Casey nor Sgt. Valerio entered the building. PO Casey did not know where the gun was found.

**Witness Officer: SGT FERNANDO VALERIO**

- *Sgt. Valerio is a § 87(2)(b)-old Hispanic male who is 6'2" tall and weighs 225 pounds. He has black hair and brown eyes.*
- *On December 11, 2011, Sgt. Valerio was the Conditions sergeant with PO Casey as his operator. He was dressed in uniform and assigned to an unmarked patrol car.*

**Memo Book**

On December 11, 2011, at 4:08 p.m., Sgt. Valerio responded to call for additional units (10-85) made by PO Soberal and PO Castillo (encl. 18a-c)

**CCRB Statement**

On October 11, 2012, Sgt. Valerio was interviewed at the CCRB (encl. 19a-b).

Sgt. Valerio responded to a call for additional officers at § 87(2)(b). Upon arrival, he saw multiple uniformed officers already at the location. The only officers Sgt. Valerio recognized were PO Casey and PO Castillo. There were also officers assigned to the 40<sup>th</sup> Precinct whom Sgt. Valerio did not know. § 87(2)(b) was handcuffed, sitting down on the ground outside the building. Sgt. Valerio approached § 87(2)(b) and asked him if he was alright. § 87(2)(b) stated that he was uninjured, and he appeared uninjured. Sgt. Valerio asked § 87(2)(b) what had happened. § 87(2)(b) stated that officers were asking him about a bag and he stated, "Some girl took it, and took it out the back door. I don't know where she is. I don't know where she is."

PO Soberal and PO Marku exited the building with a book bag with a firearm inside, and § 87(2)(b) and § 87(2)(b) under arrest. Sgt. Valerio and PO Casey never entered the building. Sgt. Valerio instructed PO Casey to stand by the door to the building. PO Soberal and PO Marku were the only two officers whom Sgt. Valerio saw entering or exiting the building. PO Soberal opened the book bag to show Sgt. Valerio the gun inside. PO Soberal maintained custody of the bag until it was tagged as evidence.

**Witness Officer: PO OSBEL MEDINA**

- *PO Medina is a § 87(2)(b)-old Hispanic male, who is 5'7" tall and weighs 220 pounds. He has black hair and brown eyes.*
- *On December 11, 2011, PO Medina was assigned to conditions with PO Marku. They were dressed in uniform and assigned to a marked patrol car.*

**Memo Book**

On December 11, 2011, at 4:15 p.m., PO Medina and PO Marku responded to a call for additional units (10-85) at § 87(2)(b) to assist PO Castillo and PO Soberal. At 4:20 p.m., three arrests were made by PO Soberal for § 87(2)(b). At 4:40 p.m. PO Medina returned to PSA 7 to assist in the arrest processing (encl. 22a-c).

**CCRB Statement**

On January 24, 2013, PO Medina was interviewed at the CCRB (encl. 23a-b).

PO Medina and PO Marku were separated from each other as they went to search for PO Castillo and PO Soberal. PO Medina exited the building from the front door while PO Marku exited from

the rear door. Sgt. Valerio was outside of the rear exit of § 87(2)(b) § 87(2)(b) Sgt. Valerio instructed PO Medina to retrieve the prisoner van and to transport prisoners. PO Medina brought the prisoner van to the location and § 87(2)(b) and § 87(2)(b) were brought out of the building. PO Medina did not see any injuries on § 87(2)(b)

PO Medina did not see officers arrest anyone or enter the building. PO Medina learned that a gun was recovered did not know how, when, or by whom. PO Medina did not go inside the building.

## **NYPD Documents**

### **Command Log**

The command log entry for § 87(2)(b) indicated that he was in normal condition (encl. 25a).

### **Arrest Photograph**

There are no visible injuries in § 87(2)(b)'s arrest photograph (encl. 26a)

### **Arrest for Incident and Disposition**

- § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

- § 87(2)(b)

### **Status of Civil Proceedings**

- § 87(2)(b) has not filed a Notice of Claim with the City of New York as of August 13, 2012 with regard to the incident (encl. 30g).

### **Civilian Criminal History**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Civilian CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) or § 87(2)(b) (encl. 3a-b).

### **Subject Officer CCRB Histories**

- PO Marku has been a member of the service for six years and there are no substantiated CCRB allegations against him (encl. 2a).
- PO Soberal has been a member of the service for six years and there are no substantiated CCRB allegations against him. (encl. 2b).
- PO Casey has been a member of the service for nine years. In CCRB case number 200506488, allegations of force and stop were substantiated. PO Casey was found not guilty of the force allegation at trial, and the DAO declined to prosecute the allegation of the stop (encl. 2c-d).
- PO Castillo has been a member of the service for four years and there are no substantiated CCRB allegations against him. (encl. 2e).

## **Conclusion**

### **Identification of Subject Officers**

§ 87(2)(b) identified PO Casey by reading his nameplate and identified him as the officer who used force against § 87(2)(b) on the first floor. § 87(2)(b) also identified PO Castillo by reading his nameplate and accused him of threatening to arrest her and cursing at her. PO

Marku and PO Soberal admitted that they were the first two officers to enter § 87(2)(b)'s apartment. § 87(2)(g)

Although PO Soberal was slightly behind PO Marku, the entry was based on observations both officers made. § 87(2)(g) PO Marku admitted that he pushed § 87(2)(b). § 87(2)(b) alleged that PO Marku also cursed at him, and used offensive language towards him. § 87(2)(b) alleged that PO Casey cursed at § 87(2)(b) inside the apartment. While § 87(2)(b) did not know the officer's name, he described an officer matching PO Casey's description. § 87(2)(b) also alleged that an unidentified officer cursed at him, but could not describe the officer in detail. A photo array was not conducted because of the limited physical description, and no other potential subject officers could be identified. § 87(2)(g)

### **Allegations Not Pleaded**

After § 87(2)(b) was arrested, she asked her arresting officer to allow her to retrieve her shoes from her apartment. The officer obliged her and followed her into the apartment to ensure that she did not escape, hide contraband or retrieve a weapon. § 87(2)(g)

PO Marku stated that § 87(2)(b) interfered as he was attempting to arrest § 87(2)(b) and that he pushed § 87(2)(b) tearing § 87(2)(b)'s shirt. § 87(2)(b) admitted that he was preventing officers from entering the apartment, and that the tearing of the shirt occurred as PO Marku pushed him onto a couch. Since the damage to § 87(2)(b)'s shirt was caused accidentally, and the damage occurred at the same time as the push, this allegation was subsumed into the allegation of force. § 87(2)(g)

### **Investigative Findings and Recommendations**

#### **Allegation A – Force: PO Michael Casey used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that PO Casey punched § 87(2)(b) repeatedly in the back of the head as § 87(2)(b) was on the ground. In her online complaint, § 87(2)(b) failed to mention this allegation, and instead stated that PO Castillo had his knee in the back of § 87(2)(b)'s head. § 87(2)(b) came out of her apartment on the first floor and saw various unidentified police officers surrounding § 87(2)(b) as he was on the ground. § 87(2)(b) was on the ground with his head towards § 87(2)(b) and § 87(2)(b) stated that the only contact the police officers had with § 87(2)(b) was against his back. PO Casey stated that he arrived at the location after § 87(2)(b) had been subdued and that he did not take any action. PO Soberal, PO Castillo and PO Marku denied that an officer punched § 87(2)(b) in the head. PO Medina and Sgt. Valerio stated that § 87(2)(b) appeared to be uninjured. § 87(2)(b) did not obtain medical treatment, and his arrest photograph did not show have any visible injuries on his head.

§ 87(2)(g)

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§ 87(2)(b) alleged that as she watched officers arresting § 87(2)(b) PO Castillo ve

§ 87(2)(g)

**Apt 3A.**

§ 87(2)(b)

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CCRB – Confidential



that police officers may lawfully conduct a limited protective sweep of the apartment if they have reason to fear an “ambush in a confined setting of unknown configuration.”

§ 87(2)(g)

**Allegation F – Discourtesy: PO Visar Marku spoke rudely to § 87(2)(b)**

§ 87(2)(b) stated that he held out his arms and attempted to prevent officers from entering the apartment. He alleged that PO Marku said to him, “Where’s the fucking bag?” § 87(2)(b) did not mention hearing this comment. PO Marku and PO Soberal denied that any officer cursed at § 87(2)(b)

In PD v. White, the Police Department decided that though the use of profanity is not condoned, the use of profanity in stressful and potentially dangerous circumstances does not constitute, “actionable misconduct.” (encl. 1f-i)

§ 87(2)(g)

**Allegation G – Offensive Language: PO Visar Marku made remarks to § 87(2)(b) based upon his perceived sexual orientation.**

§ 87(2)(b) alleged that PO Marku said to him, “Sit the fuck down faggot,” and, “Shut your little gay ass up.” § 87(2)(b) also claimed that an officer called § 87(2)(b) a “faggot” and told him to “sit your gay ass down.” PO Marku denied that he used such language with § 87(2)(b)

**Allegation H – Force: PO Visar Marku used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that when he attempted to block PO Marku from entering the apartment, PO Marku grabbed him by the front of his shirt and pushed him backwards onto a couch. § 87(2)(b) stood up from the couch and PO Marku again grabbed him by the shirt and pushed him back down, ripping § 87(2)(b)'s shirt, and causing a minor scratch to his chest. PO Marku stated that when he first entered the apartment and attempted to handcuff § 87(2)(b) § 87(2)(b) grabbed his legs and interfered in his attempt to arrest § 87(2)(b). PO Marku admitted that he pushed § 87(2)(b) ripping his shirt.

According to Patrol Guide procedure 203-11, officers are to “Use minimum necessary force.” (encl. 1d-e)

§ 87(2)(g)

**Allegation I – Discourtesy: PO Michael Casey spoke rudely to** § 87(2)(b)

§ 87(2)(b) alleged that an officer whom § 87(2)(b) has identified as PO Casey told him, “Shut the fuck up.” PO Casey denied being inside the apartment, while PO Soberal and PO Marku denied that any officer used such language towards § 87(2)(b) § 87(2)(g)

**Allegation J – Discourtesy: An officer spoke rudely to** § 87(2)(b)

§ 87(2)(b) alleged that an unidentified officer he could only describe as a white or Hispanic male who stood 5’8” tall, told him, “Get the fuck up and stay right § 87(2)(b) did not mention this allegation, and all officers denied making such a comment to § 87(2)(b) § 87(2)(g)

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Team: 5

Investigator: \_\_\_\_\_ Simon Wang 04/15/13  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date